

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 98-547-E - ORDER NO. 1999-229
MARCH 31, 1999

IN RE: Broad River Electric Cooperative, Inc.,)	ORDER DENYING ✓ MR
)	PETITION FOR
Petitioner,)	REHEARING OR
)	RECONSIDERATION
vs.)	
)	
Board of Public Works, City of Gaffney,)	
)	
Respondent.)	
)	
)	

This matter comes before the Public Service Commission of South Carolina (the Commission) on the Petition of the Board of Public Works, City of Gaffney (the Board) for rehearing or reconsideration of our Order No. 1999-123, in which we determined that Broad River Electric Cooperative, Inc. (Broad River or the Coop.), rather than the Board, was the proper provider of electricity to certain premises under construction to be used as a lodging facility known as the Hampton Inn. The premises are located in Cherokee County, South Carolina.

The Board notes that the property on which Hampton Inn was being constructed is located in unassigned territory, and that no corridor rights are applicable to the Board. Also, the developers of the Hampton Inn had requested temporary electric service from

the Board while the building was under construction, and permanent electric service from the Board once the construction was completed.

However, for the reasons stated below, we must deny the Petition.

As noted by the Board, this Commission based its decision on our interpretation of S.C. Code Ann. Section 58-27-610(2) (1976), and on the fact that the Coop. had previously provided electric service to a building which had been located on the real property upon which the Hampton Inn would be located. We are in agreement with the Board's contention that the prior building had been demolished and removed from the site. We applied the definition of "premises," in Section 58-27-610(2) to conclude that the Hampton Inn's new building was not a new "premises," and that the Coop. had served the Hampton Inn's "premises" for twenty years and was entitled to continue to serve the "premises." The Board states in its Petition that the Commission misapplied the statutory definition of "premises," and that, therefore, the holding in Order No. 1999-123 should be modified, and the right of the Board to serve the Hampton Inn as a new "premises" be declared under S.C. Code Ann. Section 58-27-620(1)(d) (1976). We disagree.

Section 58-27-610(2) defines "premises" as "the building, structure or facility to which electricity is being or is to be furnished..." The Board believes that the Commission erroneously re-defined premises as the real property upon which a structure is located or the site of a premises rather than the "premises" itself. The Board notes that the Commission avoided the "plain meaning" of the statute, and alleges that "premises"

must be a man-made structure “to which electricity is... furnished.” (See Petition of the Board at 2). Neither of these latter two statements is correct.

Rather than attempt to avoid the “plain meaning” of the statute, we instead endeavored in Order No. 1999-123 to give a thorough analysis to the question of what constitutes “premises.” The answer is not as simple as the Board would believe. The term “premises” contains the term “facility,” for example. A “facility” is defined by the Americans with Disabilities Act (ADA) as “all or any portion of buildings, structures, *sites*, complexes, rolling stock, or other conveyances, roads, walks, passageways, parking lots, or other real personal property, including the *site* where the building, property, structure, or equipment is located (emphasis added).” Therefore, the premises consists of the entire *site* to which electric service is provided and on which the building, structure, or facility stands. We do not think that this view is so far-fetched. Clearly, electricity is furnished to areas other than “man-made structures,” such as parking lots for lighting purposes. Therefore, we believe that a thorough analysis of the term “premises” yields the conclusion outlined above in this case, coupled with the fact that the Coop. had served the premises for the last twenty years. Clearly, under this scenario, and looking at our entire legal analysis of the term “premises,” no new “premises” resulted with the demolition of the old structure, and construction of the Hampton Inn, and the Coop. was the proper party to serve the Hampton Inn. As we stated in Order No. 1999-123, several portions of the original pre-Hampton Inn premises remain, i.e., driveway cuts, an underground electrical line, and a fence. Further, the new Hampton Inn is built mostly on the footprint of the old pre-Hampton Inn facility. These factors show that, despite

removal of the main structure and replacement with a new structure in this case, many portions of the original “premises” remain intact.

The Board states that use of “site” for “premises” would allow an electric supplier which provided electric service to a single building on an extensive tract of land owned by one person, to serve all buildings on that tract, regardless of any later sale, subdivision, or other alteration of the size of the tract. This is not the case or this Commission’s intent. We do not interpret “site” so broadly as characterized by the Board. Indeed, we do attach significance to the Hampton Inn being built mostly in the “footprint” of the old pre-Hampton Inn facility, as well as to the driveway cuts, underground electric line, and fence remaining from the pre-Hampton Inn facility. We think that all of these physical characteristics clearly designate the “site” in the case at bar, and nothing is indicated to extend the definition to any broader area than that, contrary to the allegations of the Board.

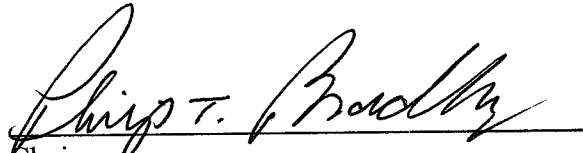
The Board also attempts to distinguish prior Commission case law used to support our decision here. The attempt is unavailing. In fact, the 1997 Aiken Electric Coop. v. South Carolina Electric & Gas Co. case mentioned is exactly on point with the present case, since the entire original structure was removed, and replaced with a new one. Under our definition of “premises,” the fact that complete structures were not torn down is not relevant.

Lastly, the Board questions the policy reasons for our holding. Clearly, even though Section 58-27-610 et seq. do not specifically refer to municipal electrics, it is certain that an element of certainty and reliability in the designation of the rights of

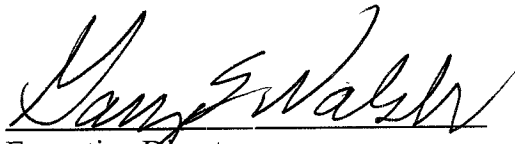
electric suppliers is appropriate policy for all providers of electricity and their customers. Predictability is certainly a virtue for those attempting to locate new facilities in previously uninhabited areas, and for those building new facilities over previously occupied premises. Also, even though the Board in this case serves neighboring premises, the right of the Coop. to serve seems clear under the facts and the law.

Because of the above-stated reasoning, the Petition is denied. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Executive Director

(SEAL)